

VZCZCXRO6225

RR RUEHCHI RUEHCN RUEHDT RUEHGH RUEHHM RUEHVC

DE RUEHHK #2121/01 3260303

ZNY CCCCC ZZH

R 210303Z NOV 08

FM AMCONSUL HONG KONG

TO RUEHC/SECSTATE WASHDC 6283

INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS

RUEHOO/CHINA POSTS COLLECTIVE

RUCPDOC/DEPT OF COMMERCE WASHDC

C O N F I D E N T I A L SECTION 01 OF 02 HONG KONG 002121

SIPDIS

STATE FOR EAP/CM AND EEB/IPE, USPTO FOR TIM BROWNING, USTR  
FOR JEFF LEE

E.O. 12958: DECL: 11/18/2018

TAGS: ECON EFIN EINV ETRD HK CH

SUBJECT: HONG KONG SHIFTING TOWARD VOLUNTARY RULES FOR  
DIGITAL COPYRIGHT PROTECTION

REF: HONG KONG 1775

Classified By: Consul General Joseph Donovan for reasons 1.4 (b) and (d)  
)

¶11. (C) Summary: The Hong Kong Government (HKG) has postponed efforts to enact legislative amendments to protect copyrighted materials in the digital realm. The government instead seeks to use its recently established tripartite forum (including internet service providers, content providers, and content users) to establish a voluntary code of conduct governing the electronic copying and transmission of protected content. Content providers oppose this new government position. They say a voluntary code will lack statutory penalties, and they expect the tripartite forum's progress toward a negotiated agreement to remain slow. End summary.

¶12. (C) Comment: If the HKG pursues this new approach, emphasizing the tripartite forum at the expense of legislative amendments to the Copyright Ordinance, we believe Hong Kong risks its status as a leading protector of IPR in the region. While the motives for the government's shift remain unclear, the result is likely to be a significant delay in establishing a formal IPR protection framework for the digital realm. If the tripartite forum demonstrates little progress in coming months, as many observers expect, content providers will grow increasingly impatient. In 2009 and beyond, their growing copyright infringement losses could override some members' willingness to continue participation in the forum. End comment.

=====  
Legislation and Voluntary Code on Parallel Tracks...  
=====

¶13. (SBU) On August 31, the HKG's Commerce and Economic Development Bureau (CEDB) closed the public comment period on several proposals to modernize and strengthen Hong Kong's Copyright Ordinance (CO). The CEDB's proposed legislative amendments would broaden copyright protection in a "technology neutral" manner to cover all modes of electronic transmission of copyrighted materials. Until recently, industry observers expected the government to enact the amendments by summer 2009.

¶14. (C) As most of the proposed CO amendments involve the rights and responsibilities of Internet service providers (ISPs), the CEDB recently established a tripartite forum composed of representatives from ISPs, copyright owners and content users. As noted in the minutes from the first tripartite forum meeting on July 16, 2008, the CEDB official who chaired the meeting stated that the forum should be used to draft a voluntary code of practice for ISPs by June 2009, in order to "tie in with the legislative timetable" for the

broader proposals to amend the CO (reftel). We recently learned that the HKG has decided to depart from this approach.

=====

...Until Recently Merging

=====

15. (C) Stephen Selby, Director of the HKG's Intellectual Property Department (part of the CEDB), told us on November 13 that the HKG will postpone its planned amendments to the CO. "We've seen some very cogent arguments for doing no new legislation in the digital IPR realm," he said. The HKG now looks to use the tripartite forum to establish a voluntary set of rules governing electronic transmission of copyrighted materials. Legislative amendments to the CO will be pursued further only if the tripartite forum fails to produce an acceptable agreement among its constituent negotiating parties. According to Selby, the CEDB seeks to emulate the UK government's attempts to establish a voluntary framework to prevent unauthorized copying and dissemination of electronically stored products.

=====

Content Providers Annoyed With New Direction

=====

16. (C) Several members of AmCham's Intellectual Property Committee confirmed the HKG's new direction to us and expressed their displeasure. Committee member and Executive Director of the International Federation Against Copyright Theft (IFACT) in Greater China, Sam Ho, told us that IFACT

HONG KONG 00002121 002 OF 002

opposes the HKG's efforts to replace legislated amendments with a voluntary code of conduct. He said, "A voluntary code will have civil rather than criminal penalties, and it won't provide enough protection to content providers." As a participant in the tripartite forum, Ho was also concerned that the forum's deliberations would proceed until well into 12010. He said, "We can't afford a delay like that, before we get the legal protection we need."

DONOVAN